

**American Postal Workers Union, AFL-CIO and Sarah Johnson.** Case 7-CB-10581(P)

April 30, 1999

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN  
AND BRAME

On March 24, 1998, Administrative Law Judge Richard A. Scully issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

From October 1993 until December 1994,<sup>1</sup> the Employer assigned employee Sarah Johnson overtime. This became the subject of a dispute between motor vehicle service employees and clerks like Johnson. The Respondent represents both groups of employees, and it successfully maintained in a grievance proceeding concerning Johnson's disputed overtime that the work belonged to the motor vehicle service employees. As a result, Johnson ceased working overtime, but Leila Ransom, another clerk, continued to do so. Johnson decided to file a grievance about this alleged disparity and on December 8 telephoned Michael Foster, the Respondent's motor vehicle service director, and inquired who would file the grievance for her.<sup>2</sup> Johnson did not discuss the specifics of her grievance. Foster told Johnson that a steward could handle the grievance for her.<sup>3</sup>

On December 13, Johnson asked Steward Gene Szot about filing a grievance for her, and he asked her whether she was a member of the Union. Johnson asked what that had to do with it, and Szot replied that he was required to ask everyone that question. Johnson explained her grievance, and Szot said that he would have to check with Foster. On December 15, Johnson asked Szot about her grievance. Szot suggested that Johnson talk to Steward Charles Morson because he had filed the grievance over her previously disputed overtime, and the new grievance might be a breach of ethics or a conflict of interest.

<sup>1</sup> All dates are in 1994 unless otherwise indicated.

<sup>2</sup> Johnson resigned her membership in the Respondent in 1988 and has paid neither dues nor service fees to the Respondent since then.

<sup>3</sup> Johnson testified that Foster called her back shortly thereafter and said that "his loyalties were to the dues-paying members" of the motor service vehicle craft. Foster denied that he made this statement and testified that he told Johnson that "my loyalties ran to the Motor Vehicle Service . . . craft employees." The judge specifically found no basis for crediting Johnson over Foster and therefore concluded that the evidence failed to establish that Foster implied that nonmembers would not be taken care of by the Respondent.

On December 16, Johnson asked Morson whether he would file a grievance for her. Morson, as had Szot, asked Johnson whether she was a member of the Union. Johnson asked what that had to do with anything, and Morson replied that he was required to ask.<sup>4</sup> Johnson told Morson that she was not a member of the Union. Morson told Johnson he would handle her grievance, would talk to Foster about it, and would have a step-one meeting with either Supervisor Jenkins or Acting Supervisor Willie Light. Later that day, Morson again told Johnson that her grievance was going to be handled. On December 23, Johnson asked Morson about her grievance. Morson said he had had an unsuccessful step-one meeting with Jenkins but the grievance would go to step two where Foster would handle it. Johnson asked Morson for a copy of her grievance, but she never received one. Later that day, Johnson asked Jenkins and Light about her grievance. Jenkins said Morson had not filed a grievance with him and there had been no step-one meeting. Light said Morson had mentioned writing a grievance for her but there had not been a step one meeting. In early January, Johnson asked Szot about her grievance a couple of times but he indicated that he had heard nothing about it.<sup>5</sup> The judge found that Morson had not had a step-one meeting, and indeed had not even filed a grievance.

The judge dismissed the complaint in its entirety. First, the judge noted that the Respondent's stewards customarily asked employees seeking assistance about their union membership, and that both Szot and Morson did no more than this. The judge also noted that Szot and Morson neither pursued the issue with Johnson nor told her that they would not represent her. The judge emphasized that Morson told Johnson that he would file her grievance. Accordingly, under all these circumstances, the judge found no coercion in Szot and Morson's interrogating Johnson about her union membership at the same time they discussed her grievance with her. Second, the judge noted that there was no evidence showing that Johnson acted to her detriment, was prejudiced, or suffered any loss as a result of Morson's December 23 misrepresentations about her grievance. The judge also noted that Johnson's conversations with Supervisors Light and Jenkins within a few hours of Morson's misrepresentation placed Johnson on notice that the Union had not taken her grievance to step one. Again, under all these circumstances, the judge found

<sup>4</sup> The judge credited the testimony of the Respondent's president, Roger Holbrook, that the Respondent's stewards were required to inquire about union membership when employees asked them for assistance. The judge noted Holbrook's explanation that this clarified the employee bargaining unit and representative (there were multiple unions), and the receipt of noncontractual services for union members.

<sup>5</sup> There is no allegation that the Respondent's refusal or failure to process the grievance for Johnson constitutes a violation of the Act. The Respondent never told Johnson that her grievance had no merit or that it had not been filed.

that the Respondent did not violate its duty of fair representation in Morson's erroneously informing Johnson that her grievance had been filed and was being processed.

Contrary to the judge, we find that under the circumstances of this case the Respondent, through Szot and Morson, violated Section 8(b)(1)(A) by interrogating Johnson regarding her union membership. As the judge noted, such an inquiry should be examined "in context in order to determine if under all the circumstances it would have a tendency to restrain and coerce employees within the meaning of Section 8(b)(1)(A) of the Act." *Letter Carriers Local 233 (Postal Service)*, 311 NLRB 641, 545 (1993). Here, Johnson was completely dependent upon the Respondent for the protection of her right to file a grievance. Yet, not once but twice, the Respondent greeted Johnson's request for assistance in filing her grievance with an immediate inquiry into her membership in the Respondent. Moreover, when Johnson questioned Szot and Morson why they were asking, they offered no legitimate explanation but simply responded that they were "required" to ask. Such responses could only suggest that the Respondent's future handling of Johnson's grievance may be affected by her lack of membership in the Respondent.

Contrary to the judge, we further find that the Respondent violated Section 8(b)(1)(A) based on Morson's statements to Johnson concerning the status of her grievance. A union's duty of fair representation includes the duty to neither willfully misinform employees about their grievances nor to willfully keep them uninformed.<sup>6</sup> It is undisputed that on December 23 Morson told Johnson that he had had an unsuccessful step-one meeting with Supervisor Jenkins but that her grievance would go to step two, where Foster would handle it. Morson thereby indicated that her grievance had been filed. It is also undisputed that these representations were not true. Thus, Morson chose to falsely lead Johnson to believe that the Respondent was actively pursuing her grievance. This conduct goes beyond mere negligence. Morson willfully misinformed Johnson and his arbitrary, bad-faith action violated the Respondent's duty to represent Johnson fairly.<sup>7</sup> We find that under these circumstances, Morson violated Section 8(b)(1)(A) of the Act by willfully misinforming Johnson about the status of her grievance.

#### CONCLUSIONS OF LAW

1. United States Postal Service (USPS) is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>6</sup> *Union of Security Personnel of Hospitals (Church Charity Foundation)*, 267 NLRB 974, 980 (1983); *Auto Workers Local 417 (Falcon Industries)*, 245 NLRB 527, 534 (1980); *Groves-Granite*, 229 NLRB 56, 63 (1977).

<sup>7</sup> *Service Employees Local 3036 (Linden Maintenance Corp.)*, 280 NLRB 995 (1986).

2. American Postal Workers Union, AFL-CIO (APWU) is a labor organization within the meaning of Section 2(5) of the Act.

3. APWU has violated Section 8(b)(1)(A) of the Act by interrogating an employee regarding her union membership in manner that implies that her lack of membership may affect the Union's handling of her grievance; and by willfully misinforming an employee about the status of her grievance.

4. The foregoing unfair labor practices affect commerce within the meaning of the Act.

#### ORDER

The Respondent, American Postal Workers Union, AFL-CIO (APWU), Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Interrogating employees regarding their union membership in a manner that implies that lack of membership may affect the Union's handling of her grievances and willfully misinforming employees about the status of their grievances.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to its members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish signed copies of the notice to the Regional Director of Region 7 for posting by United States Postal Service (USPS), if willing, at all locations where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX  
NOTICE TO MEMBERS AND EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their union membership in a manner that implies that lack of membership may affect our handling of their grievances; and WE WILL NOT willfully misinform employees about the status of their grievances.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

*Amy J. Roemer, Esq.*, for the General Counsel.  
*Christopher Legghio, Esq.*, of Southfield, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon a charge filed on June 8, 1995, by Charging Party Sarah Johnson, the Regional Director for Region 7 of National Labor Relations Board (the Board), issued a complaint on July 31, 1995, alleging that American Postal Workers Union, AFL-CIO (the Respondent), had committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Detroit, Michigan, on May 13, 1997, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record,<sup>1</sup> and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The United States Postal Service (USPS) provides postal services for the United States of America and in the performance of that function operates facilities throughout the United States, including that involved in this proceeding, its vehicle maintenance facility (VMF) in Detroit, Michigan. The Board

<sup>1</sup> Counsel for the General Counsel has moved to strike a portion of the Respondent's brief referring to an arbitrator's decision entered after the hearing. Counsel for the Respondent has moved to reopen the record herein to admit the decision into evidence. I find that the decision has no bearing on the limited issues presented in this matter and that the motion to strike should be granted and the motion to reopen the record denied.

has jurisdiction over the Employer pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 1209.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material it has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Sarah Johnson began working for USPS as a letter carrier in December 1967. She has been employed as a postal clerk since May 1981. She became a member of the Respondent Union, which represents the clerk craft, but resigned her membership in 1988. Since then she has paid no dues or service fees to the Respondent Union. In October 1993, the Employer assigned Johnson to work as a clerk at the VMF. The parties have stipulated that at all times material Johnson has been a member of the bargaining unit represented by the Respondent Union. With the exception of another clerk, Leila Ransom, who was detailed to work at there as a timekeeper, all of the other employees at the VMF were in the motor vehicle services (MVS) craft which was also represented by the Respondent Union. Between October 1993 and December 1994, the Employer had assigned Johnson to work overtime at the VMF. The Respondent Union objected to this and filed three grievances in which it maintained, *inter alia*, that overtime had been improperly assigned to Johnson instead of employees in the MVS craft. In December 1994, one of the grievances was resolved in favor of the Respondent Union through a determination that the overtime should have been assigned to available MVS craft employees rather than Johnson. As a result, Johnson no longer was assigned to work any overtime at the VMF and the MVS craft employees were eventually compensated for 257 hours of overtime that she had worked.

Johnson testified that in December 1994, after she learned of the decision denying her any more overtime, she wanted to file a grievance of her own because Ransom, whose overtime had also been challenged by the Union, continued to receive overtime. On December 8, she telephoned Michael Foster, the Respondent Union's motor vehicle service director, and asked, without specifying the nature of the grievance, whether Foster had to file it for her or if any of the stewards could do it. Foster told her that any steward could do so and the conversation ended. About 10 minutes later, Foster called her back and told her that he did not have any problem with her filing a grievance, "but his loyalties were to the motor vehicle craft union members." Johnson asked if that meant, since she was not a member of the Union, she would not be represented. Foster said that "his loyalties were to the dues-paying members of MVS-APW" and hung up. On December 13, Johnson asked Union Steward Gene Szot about filing a grievance for her and he asked her if she was a member of the Union. Johnson asked what that had to do with it and Szot said it was a question they were required to ask everyone. She told Szot the nature of her grievance and he said that he would have to check with Foster and see if he could file the grievance for her. On December 15, she saw Szot and asked about the grievance. Szot said that he was an alternate steward for Charles Morson, that Morson had filed the grievance against her working overtime, and that it would be a breach of ethics or conflict of interest for him to file the grievance she was requesting. Szot suggested that she talk to Morson about it. On December 16 at about 8 a.m., she went to Morson and asked if he would file a grievance for her. He

responded by asking if she was a member of the Union. Johnson asked what that had to do with anything and Morson replied that they were required to ask. Johnson said that she was not a member and that, if when they represented her before they had not been unfair, she might still be a member, but that she had not seen any reason to want to be a member. Morson told her that he would handle her grievance. She told him that her grievance was that she was not allowed to work any overtime while Ransom was working seven days at the same facility. Morson said that he was going to talk to Foster about it, but in the meantime he would have a step one with Mr. Jenkins or with Willie Light who was acting supervisor in Jenkins' place. At 2 p.m. the same day, Morson came and told her that her grievance was going to be handled.

On December 23, Johnson asked Morson how her grievance was going. Morson responded that he had a step one with Jenkins who had denied the grievance and that it was going to step two where Foster would handle it. A short time later that day she asked Morson for a written copy of the grievance. He told her it was down in the union office and as soon as a supervisor came back and authorized him to go down there he would get her a copy. However, she never got a copy of the grievance. On December 23, Johnson asked Jenkins if a grievance had been filed. He told her that Morson had not filed a grievance with him and that there had been no step-one meeting. He suggested she check with Light to see if he knew about it. When she asked Light about it, he said that Morson had mentioned writing a grievance for her but there had not been a step-one meeting. When Johnson returned to work after being on leave until January 4, Morson was off. She testified that after he returned to work on January 9, he seemed to be avoiding her and she never got to talk to him about the grievance. She asked Szot about it a couple of times but he had not heard anything about it. In fact, the grievance Johnson requested was never filed by the Respondent Union. She was never told by Morson or any union representative that the grievance had no merit or that it had not been filed.

The complaint alleges that the Respondent Union violated Section 8(b)(1)(A) of the Act by the actions of Stewards Szot and Morson in asking her if she was a union member and by Morson's misleading her about the status of her grievance. There is no allegation that the Respondent Union's refusal or failure to process the grievance for Johnson constituted a violation of the Act.

#### Analysis and Conclusions

Counsel for the General Counsel asserts that the stewards' questions about Johnson's union membership when she requested that a grievance be filed constituted per se violations of the Act. While the cases cited in support of that proposition clearly establish that a labor organization which is the exclusive bargaining representative of an appropriate unit has a duty to fairly represent all persons employed in that unit without regard to whether they are members and that a threat to withhold representation on that basis is unlawful, they do not purport to establish that merely asking whether an employee is a member of the union is a per se violation of Section 8(b)(1)(A), regardless of the surrounding circumstances. Such an inquiry should be examined "in context in order to determine if under all the circumstances it would have a tendency to restrain and coerce employees within the meaning of Section 8(b)(1)(A) of the Act." *Letter Carriers Local 233 (Postal Service)*, 311 NLRB 541, 545 (1993). Cf. *Rossmore House*, 269 NLRB 1176, 1177

(1984) (Employer's interrogation of employees is not a per se violation of Sec. 8(a)(1)).

Union President Roger Holbrook credibly testified that among the many instructions he has given his stewards concerning employees who ask them for assistance was that they should inquire as to whether the employee was a member of the Union. One reason for doing so is to determine whether the person is in a bargaining unit that the union represents, as in some facilities there may be more than one union representing the various employees who work there. Another is that, apart from benefits provided in a collective-bargaining agreement, the Union performs certain functions for members that it does not provide to nonmembers, such as, Merit Systems Protection Board and Equal Employment Opportunity representation. Both Szot and Morson asked Johnson if she were a member of the Union when she sought their assistance to file a grievance. In both instances, Johnson asked what that had to do with anything and both stewards responded that it was a question they were required to ask, without further elaboration. It does not appear that either inquired further or said anything that indicated or implied that it would affect whether or not they assisted her or the quality of the representation. Although Johnson said she told Morson that she was not a member and that she felt she had been treated unfairly by the Union, he told her that he would file the grievance she had requested. Considering all of the circumstances, I find no reason to conclude that merely asking Johnson if she was a member of the Union was coercive or implied that she would not be fairly represented because she was not.<sup>2</sup> Accordingly, I shall recommend that this allegation be dismissed.

Johnson was a reasonably credible witness and her testimony concerning what Morson told her about filing the grievance and holding a step-one meeting was not effectively contradicted, inasmuch as Morson did not testify. There was testimony that Morson had been off work for about 2 years prior to the hearing due to an injury, but there was no evidence establishing that he was unable to appear and testify or that he was not favorably disposed toward the Union. The Respondent's attempt to establish that Morson informed Johnson that her grievance had no merit and would not be processed through the hearsay testimony of Foster, viz, that he told Morson to so inform Johnson and that Morson reported that he done so, is insufficient to counter the credible testimony of Johnson as to what she was told, as is its contention that since it had previously taken a position contrary to Johnson's being given overtime she should have known that Morson would not file the grievance on her behalf. Its speculation that Johnson may have misunderstood what Morson told her is no more than that. I find that the evidence establishes that Morson informed Johnson that he had filed the grievance on her behalf and had held a step-one meeting on it when, in fact, he had not done so.

<sup>2</sup> Counsel for the General Counsel contends that the stewards' questions concerning union membership must be viewed in the context of Foster's having told Johnson, a few days before, that he did not have a problem with her filing a grievance but that his loyalties were to the dues-paying motor vehicle craft union members. Foster credibly testified that he told Johnson his loyalties ran to "the motor vehicle craft employees," which was consistent with the position he had taken in the grievances challenging Johnson's being given overtime. I find no basis for crediting Johnson's version of the conversation over that of Foster; consequently, I cannot conclude that the evidence establishes that Foster implied that nonmembers would not be taken care of by the Union.

As noted above, there is no allegation in the complaint that the Respondent's failure to process Johnson's overtime grievance was a violation of the Act. The issue is whether it violated its duty of fair representation by virtue of Morson's misleading statements to Johnson about the processing of her grievance which failed to accurately inform her as to the status of the grievance. Despite Morson's misrepresentation as to its status, there is no evidence that Johnson acted to her detriment, was prejudiced by or suffered any loss as a result of reliance on Morson's statements. On December 23, within hours of the time that Morson made these statements to her, Johnson was admittedly on notice that the grievance had not been filed and that a step-one meeting had not been held through her conversations with Supervisors Jenkins and Light. Under the circumstances I find no violation of Section 8(b)(1)(A) has been estab-

lished. See *Bechtel Power Corp.*, 248 NLRB 1257, 1267 (1980).

#### CONCLUSIONS OF LAW

1. USPS is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and subject to its jurisdiction of the Act by virtue of 39 U.S.C. § 1209.

2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent Union did not commit the violations of the Act alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]